

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN BRADY and DAVID L. JACKSON

Appeal No. 2006-0344
Application No. 10/245,011

ON BRIEF

Before GARRIS, PAK and WARREN, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-24.

The subject matter on appeal relates to a slow cooker. With reference to the appellants' drawing, the slow cooker 20 comprises a housing 22 having a vertically-extending wall and a pair of horizontally-extending members (i.e., handles) 26 with each having a rib 43, a bowl 28 received within the housing, a bowl lid 30 covering the bowl, and an elastomeric band 42 having opposite end portions received between the rib and wall and an intermediate portion stretched over the top of the housing, lid

and bowl. The appealed subject matter also relates to the elastomeric band itself for clamping a lid on a cooking appliance of the type previously described, wherein the elastomeric band is made from a food grade elastomeric material which can withstand continuous temperatures of 150°C. This appealed subject matter is adequately represented by independent claims 1 and 19 which read as follows:

1. A slow cooker comprising a housing having a vertically-extending wall and a pair of oppositely directed, horizontally-extending members, each having a downwardly-extending rib spaced from said wall; a bowl received within the housing; a bowl lid covering the bowl; and an elastomeric band having opposite end portions received between said rib and said wall and an intermediate portion stretched over the top of the said housing, said lid, and said bowl.

19. An elastomeric band for clamping a lid on a cooking appliance having an outer housing with oppositely-directed members projecting outwardly from the outer housing, a bowl nested in the outer housing, and a bowl lid covering the bowl, wherein the band is stretched from beneath the outwardly-projecting members and over the top of said housing, said lid, and said bowl, said elastomeric band being made from a food grade elastomeric material which can withstand continuous temperatures of 150°C.

The references set forth below are relied upon by the examiner as evidence of obviousness:

Smith	2,223,432	Dec. 3, 1940
Chen et al. (Chen)	5,355,777	Oct. 18, 1994
King et al. (King)	5,687,879	Nov. 18, 1997
Bacharowski	Des. 388,657	Jan. 6, 1998

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Under 35 U.S.C. § 103(a):

Claims 1-5 and 7-24 are rejected over Chen in view of Bacharowski;

Claims 1-24 are rejected over Smith in view of Chen and Bacharowski;

Claims 1-5 and 7-24 are rejected over Chen in view of King; and

Claims 1-24 are rejected over Smith in view of Chen and King.

Rather than reiterate the respective positions advocated by the appellants and by the examiner, we refer to the brief and to the answer for a complete exposition thereof.

OPINION

For the reasons set forth below, we will sustain only the Section 103 rejections of claims 1-5 over Chen in view of Bacharowski or King and the Section 103 rejections of claims 1-6 over Smith in view of Chen and Bacharowski or King.

We share the examiner's conclusion that it would have been obvious for one having ordinary skill in this art to combine the teachings of the applied references whereby the slow cooker of Chen or Smith is provided with an elastomeric band stretched over the top of the slow cooker housing, lid and bowl (as required by independent claim 1) in view of either Bacharowski or King. As correctly indicated by the examiner, the motivation for so

combining these reference teachings would have been to secure the slow cooker lid of Chen or Smith via an elastomeric band pursuant to the teachings of Bacharowski or King. In this way, an accidental displacement of the lid and contents of the slow cooker would have been prevented via a technique (i.e., an elastomeric band) known in the prior art to be suitable for this purpose.

In support of their argument against the rejection of independent claim 1, the appellants point out that Chen and Smith fail to disclose an elastomeric band whereas Bacharowski and King fail to disclose a slow cooker. The examiner has effectively rebutted this argument by explaining that one cannot show nonobviousness by attacking references individually (as the appellants have done) where, as here, the rejections are based on combinations of references. In re Keller 642 F.2d 413, 426, 208 USPQ 871, 882 (CCPA 1981). This is because the test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. Id., 642 F.2d at 425, 208 USPQ at 881.

With respect to the rejections which rely upon the Bacharowski reference, the appellants additionally argue that the lid securing device of Bacharowski is not an elastomeric band

(e.g., see page 8 of the brief). We cannot agree. The lid securing device shown in Bacharowski's drawing is certainly in the form of a band, and patentee's figure 1 particularly in comparison with figure 2 would have suggested that the device has elastomeric properties.

In light of the foregoing, it is our determination that the reference evidence adduced by the examiner establishes a prima facie case of obviousness with respect to appealed independent claim 1 which the appellants have failed to successfully rebut with argument or evidence of nonobviousness. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). We hereby sustain, therefore, the Section 103 rejections of claims 1-5 as being unpatentable over Chen in view of Bacharowski or King as well as the Section 103 rejections of claims 1-6 as being unpatentable over Smith in view of Chen and Bacharowski or King.¹

All of the remaining claims on appeal are limited to an elastomeric band having certain characteristics. For example, claims 7 through 10 and 13 through 24 require that the elastomeric band be made from a food grade elastomeric material

¹As a matter of clarification, we point out that dependent claims 2-6 have not been argued separately from parent independent claim 1.

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which can withstand continuous temperatures of 150°C. Additionally, claims 11 and 12 require that the elastomeric band be made from a strand of silicone rubber bonded to an endless configuration by a high strength adhesive. Concerning these claim features, it is the examiner's basic position that it would have been obvious to make the lid securing device of Bacharowski or King from silicone rubber and that the resulting silicone rubber elastomeric band would inherently possess the claim characteristics in question.

The appellants have correctly explained that the lid securing devices of Bacharowski and King, even if made from silicone rubber, will not necessarily possess the characteristics or properties under review. This is because silicone rubber may be tailored or designed to possess many different characteristics or properties which may or may not correspond to those here claimed. This well taken explanation reveals the fatal deficiency of the examiner's inherency position. That is, the examiner has failed to carry his burden of establishing a prima facie case in support of the proposition that the appellants' claimed

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characteristics or properties are necessarily (i.e., inevitably) present in an elastomeric band made from silicone rubber. See In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997) and Ex parte Levy, 17 USPQ2d 1461, 1463-64 (Bd. Pat. App. & Int. 1990). Also see In re Oelrich, 666 F.2d 578, 212 USPQ 323, 326 (CCPA 1981).

For the above stated reasons, we cannot sustain the examiner's Section 103 rejections of claims 7-24 based on Chen in view of Bacharowski or King or based on Smith in view of Chen and Bacharowski or King.

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The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED-IN-PART

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNK K. PAK)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
CHARLES F. WARREN)	
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BRG/hh

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